IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 1279 OF 2006

Shri Suhel Iqbal Pattanwala ..Applicant
Vs.
Shri Vijay Mehta ..Respondent

Mr. J.D. Khairnar i/by Mr. Vijayrao Kale & Vishal Kale for the applicant.
Mr. Rajesh More, APP for State.

CORAM: B.H. MARLAPALLE, J.

Date : July 18, 2007.

P.C.:

1. Heard the learned counsel for the applicant. The applicant's complaint filed under Section 138 of the Negotiable Instruments Act, 1881 has been dismissed by the learned Judicial Magistrate, First Class at Pune on 22/12/2005 and, therefore, this application for special leave to appeal under Section 378(4) of Cr.P.C.

2. On the basis of the evidence adduced by the complainant and the accused the learned Judge of the trial court held that the complainant did not prove that the accused had issued a cheque for Rs.9,60,000/- for discharge of loan liability, that the procedural

requirements under Section 138 of the Act were not complied with and that the cheque was dishonoured on account of insufficiency of funds.

3. The notice issued could not be proved and Exh.32 was placed on record as the proof. The same was the copy of the notice which was taken out before the court from the envelope at Exh.46 and it turned out to be an office copy of the original notice and, therefore, the learned Judge of the trial court held that without permission under Section 65 of the Evidence Act such secondary evidence could not be adduced. The complainant, thus, could not prove the factum of statutory notice having been served on the accused. The reasoning set out by the learned Judge of the trial court in support of the order of acquittal does not call for reconsiderations by this court and hence there is no case made out to grant special leave to appeal.

4. The application is, therefore, rejected.

(B.H. Marlapalle,J.)